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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 TODD NELSON,

12 Plaintiff,

13 v.

14 PEREGRINE SPORTS, LLC, a Delaware
limited liability company, doing business as
PORTLAND TIMBERS,

15 Defendant.

CASE NO. 3:17-cv-05646-RJB

ORDER ON DEFENDANT'S
MOTION TO TRANSFER, OR IN
THE ALTERNATIVE, DISMISS

16 THIS MATTER comes before the Court on Defendant Peregrine Sports, LLC, d/b/a
17 Portland Timbers' Motion to Transfer, or in the Alternative, Dismiss. Dkt. 5. The Court has
18 considered the motion, Plaintiff Todd Nelson's Response (Dkt. 13), Defendant's Reply (Dkt.
19 16), and the remainder of the file herein.

20 Defendant seeks to transfer this action from the Western District of Washington to the
21 District of Oregon, which Defendant argues is a more convenient forum under 28 U.S.C. §1404.
22 Defendant argues in the alternative that the Complaint (Dkt. 1) fails to state a claim upon which
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1 relief can be granted and, particular to the Third Cause of Action, to state a claim with the
2 requisite particularity under Fed. R. Civ. P. 9(b).

3 **I. MOTION TO TRANSFER**

4 A. Facts.

5 For purposes of this motion, the parties agree—or at least do not substantively oppose, by
6 declaration or otherwise—the majority of the relevant facts, which are either found in the
7 Complaint or declarations submitted by the parties, *to wit*, Mr. Nelson, for Plaintiff, and Joseph
8 Cote for Defendant. *See* Dkt. 1, 6, 14, 15.

9 The case centers on the allegation that Portland Timbers denied Mr. Nelson the chance to
10 renew season tickets. According to the Complaint, Mr. Nelson has purchased season tickets since
11 2009 until July 2016, when Portland Timbers told Mr. Nelson that his “right to acquire season
12 tickets” had been “unilaterally terminated . . . [even though] Plaintiff Nelson was ready, willing,
13 and able to pay, in full, the price for his season tickets.” Dkt. 1 at ¶21. *See also*, Dkt. 14 at ¶3.
14 Mr. Nelson purchased tickets for commercially for profit, buying as many as 111 “very valuable
15 . . . specific seats which Nelson carefully selected.” *Id.* at ¶¶16, 17. Because Mr. Nelson did not
16 purchase tickets in July 2016, it is alleged that Mr. Nelson can no longer be a member of The
17 Axe Society, an “exclusive” club with membership contingent on the purchase of tickets for the
18 2010 season and thereafter. Dkt. 14 at ¶¶4, 5. The Complaint alleges common law causes of
19 action for breach of contract and misrepresentation, as well as a cause of action for violations of
20 the Washington Consumer Protection Act and Federal Trade Commission Act. *Id.* at ¶¶30-56.

21 Mr. Nelson currently resides in Cathlamet, Washington, where he has resided “at all
22 material times.” Dkt. 14 at ¶2. Defendant does not dispute that Mr. Nelson currently resides in
23 Washington, but contends that membership data show an Oregon address in connection with
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1 purchase of 2010 season tickets. Dkt. 15 at 3. According to Defendant’s internal data, Mr.
2 Nelson, on several occasions, submitted address information to purchase tickets from Oregon
3 addresses. Dkt. 15 at ¶¶3, 4.

4 Portland Timbers Senior Vice President, Joseph Cote, represents that Portland Timbers’
5 stadium is in Portland, Oregon, where the team plays its home games. Dkt. 6 at ¶3. Mr. Cote
6 oversees the sales, strategy and services of all tickets for the team and represents that all staff and
7 documentation connected to the purchase of “Season Tickets,” which Portland Timbers now
8 refers to as “Annual Memberships,” are also located in Portland, Oregon. *Id.* at ¶¶4-7. Mr. Cote
9 declares that Portland Timbers do not direct advertisements into the State of Washington, “[w]ith
10 the exception of a single billboard . . . in 2010, and any Portland metro area-based digital
11 advertising that spills into southwest Washington,” for example, in Vancouver, Washington. Dkt.
12 15 at ¶5.

13 B. 28 U.S.C. §1404 legal standard.

14 Under 28 U.S.C. §1404(a) “[f]or the convenience of parties and witnesses, in the interest
15 of justice, a district court may transfer any civil action to any other district or division where it
16 might have been brought[.]” Section 1404(a) “requires two findings—that the district court is
17 one where the action ‘might have been brought’ and that the ‘convenience of the parties and
18 witnesses in the interest of justice’ favor transfer.” *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 414
19 (9th Cir. 1985).

20 C. Discussion.

21 1. *Might have been brought.*

22 There does not appear to be any dispute that the case might have been brought in the
23 District Court of Oregon. As Defendant points out—and Plaintiff does not counter—the District
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1 Court of Oregon could have subject matter jurisdiction and personal jurisdiction over this case,
2 and venue could be proper. Dkt. 5 at 3, 4. Subject matter could be based on diversity jurisdiction,
3 28 U.S.C. §1332, because the amount in controversy is greater than \$75,000, Plaintiff resides in
4 Washington, and Defendant is based in Oregon. Personal jurisdiction could be established
5 because of Defendant's contacts with Oregon, the location of its principal place of business.
6 Venue could be established under 28 U.S.C. §1391(b)(1), because Defendant is a corporation
7 that resides in Oregon.

8 The Court finds that the case might have been brought in the District of Oregon.

9 2. *Convenience and interest of justice.*

10 The decision of whether to transfer a case requires an "individualized, case-by-case
11 consideration of convenience and fairness" and is vested in the discretion of the court. *Stewart*
12 *Org., Inv. C. Ricoh Corp.*, 487 U.S. 222 (1988). The party seeking to transfer bears the burden to
13 "make a strong showing of inconvenience to warrant upsetting the plaintiff's choice of forum."
14 *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). In exercising
15 their discretion, courts may consider factors, including:

16 (1) the location where the relevant agreements were negotiated and executed, (2) the state
17 that is most familiar with the governing law, (3) the plaintiff's choice of forum, (4) the
18 respective parties' contacts with the forum, (5) the contacts relating to the plaintiff's cause
19 of action in the chosen forum, (6) the differences in the costs of litigation in the two
forums, (7) the availability of compulsory process to compel attendance of unwilling
non-party witnesses, and (8) the ease of access to sources of proof.

20 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000)

21 In this case, with the exception of one factor, the plaintiff's choice of forum, all *Jones*
22 factors are neutral or favor Defendant. In sum, Defendant has met its burden. This is an Oregon
23 case that should be litigated in the District of Oregon.

1 The first factor, location where agreements were negotiated and executed, favors
2 Defendant. Plaintiff alleges breach of contract based on denied membership in The Axe Society,
3 a club with membership contingent in part on purchase of tickets for the 2010 season. Per
4 Defendant, Mr. Nelson purchased tickets for that season when residing in Oregon, so any
5 consequential obligation now at issue was “executed” in Oregon. Plaintiff’s briefing states that
6 Mr. Nelson “completed the agreement electronically . . . thus the Agreement was executed in
7 Washington,” Dkt. 13 at 6, 7, but Plaintiff’s briefing provides no support in the record for this
8 conclusion, and Defendant’s showing directly refutes it. Portland Timbers Senior Vice President,
9 Mr. Cote, also represents that Portland Timbers drafted relevant terms and conditions and
10 administratively processed ticket purchases in Oregon.

11 The second factor, state familiar with governing law, does not favor either party, because
12 this Court has made no finding as to whether Washington or Oregon law applies. Further, if the
13 case is transferred, the District Court of Oregon is fully capable of applying Washington law.

14 The third factor, the plaintiff’s choice of forum, favors Plaintiff, because Mr. Nelson
15 resides in Washington. The Court notes, however, that Cathlamet, Washington, is a town that
16 borders Oregon, separated only by the Columbia River.

17 The fourth factor, parties’ contacts with the forum, favors Defendant. Regarding
18 Defendant’s contacts with Oregon, Defendant can point to its Portland, Oregon stadium, where
19 the team plays all home games. Portland Timbers Senior Vice President, Mr. Cote, represents
20 that “with the exception of a single billboard . . . in 2010, and any Portland metro area-based
21 digital advertising that spills into southwest Washington” the corporation has not directed
22 advertisements into the State of Washington. Conversely, Plaintiff has made no showing about
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1 his contacts (or lack of contacts) with Oregon—the record shows only that that Mr. Nelson
2 resides in Washington in a town that borders Oregon.

3 The fifth factor, contacts relating to the plaintiff’s cause of action in the chosen forum,
4 favors Defendant. Plaintiff seeks to litigate terms of a contract entered into with an Oregon-based
5 company to watch an Oregon-based sports team.

6 The sixth factor, differences in the costs of litigation, strongly favors Defendant. It would
7 appear that Defendant will need to produce most of the discovery to be exchanged by the parties,
8 to include, for example, deposition of persons instrumental to drafting relevant agreements
9 between the parties. Defendant represents that its expected witnesses and documents are in
10 Oregon. Even if much of the written discovery ultimately produced by Defendant is electronic,
11 there is no showing that discovery from Defendant is likely to be found in the State of
12 Washington. Presumably discovery from Plaintiff, e.g., about the scope of damages, would be in
13 Washington, where Plaintiff resides, but Plaintiff has not elaborated on such costs.

14 The seventh factor, availability of compulsory process to compel attendance of unwilling
15 non-party witnesses, favor Defendant. Portland Timbers is located in Portland, Oregon, which is
16 more than 100 miles from this Court, and Defendant represents that employees with knowledge
17 relevant to this litigation reside in Oregon, so it would appear that at least some witnesses fall
18 outside of this Court’s subpoena powers, including Mr. Nelson himself. *See* Fed. R. Civ. P.
19 45(c)(1)(A) (“within 100 miles of where the person resides, is employed, or regularly transacts
20 business in person”). Plaintiff has made no showing to the contrary.

21 The eighth factor, ease of access to sources of proof, favors Defendant. To the extent that
22 that discovery would include depositions of Portland Timbers employees or written records in
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1 Portland Timbers' possession, this discovery would more likely to be found in Oregon than
2 Washington.

3 The convenience of the parties and interest of justice favor the District of Oregon as the
4 preferred forum for this case. Defendant's motion to transfer should be granted.

5 **II. MOTION TO DISMISS**

6 Because Defendant requests that the Court consider dismissal for failure to state a claim
7 in the alternative to its request to transfer, the Court declines to reach the merits of Defendant's
8 motion to dismiss. Defendant's motion to dismiss is denied without prejudice.

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10 Defendant Peregrine Sports, LLC, d/b/a Portland Timbers' Motion to Transfer, or in the
11 Alternative, Dismiss (Dkt. 5) is GRANTED IN PART. The case is HEREBY TRANSFERRED
12 to the District of Oregon.

13 The Court does not reach the merits of Defendant's request to dismiss the case. To that
14 extent, Defendant's Motion is DENIED WITHOUT PREJUDICE.

15 IT IS SO ORDERED.

16 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
17 to any party appearing *pro se* at said party's last known address. The clerk is further directed to
18 transfer this case to the District of Oregon.

19 Dated this 11th day of October, 2017.

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21 ROBERT J. BRYAN
22 United States District Judge
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